

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.5240 of 2021

Phul Chandra Thakur, aged about 75 years, son of Late
Late Madho Thakur, resident of Mohalla Rasikpur, P.O.,
P.S. and District-Dumka. ... Petitioner

Versus

1. The State of Jharkhand through the Secretary, Higher Education, Human Resources Development Department, Government of Jharkhand at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi.
2. The Director, Higher Education, Human Resources Development Department, Government of Jharkhand at Project Building, Dhurwa, P.O. and P.S. Dhurwa, District-Ranchi.
3. Registrar, Sido Kanhu Murmu University, Dumka, P.O., P.S. and District-Dumka.
4. Principal, S.P. College, Dumka, P.O., P.S. and District-Dumka.Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : Mr. Subham Mishra, Adv.
: Mr. Kumar Pawan, Adv.
For the Respondents: Ms. Divyam, AC to SC-IV
For the Res.SKMU : Dr. Ashok Kr. Singh, Adv..

10/Dated:12.09.2024

Heard learned counsel for the parties.

2. The instant writ application has been preferred by the petitioner praying therein for quashing of the Memo no. 904 dated 03.05.2019, issued by the Respondent no.2; whereby the claim of the petitioner for fixation of his 5th and 6th pay scale has been rejected. A further prayer has been made for a direction upon the respondent authorities to fix the pension of the petitioner in the revised scale w.e.f. 01.01.1996 and 01.01.2006 and accordingly pay the difference of arrears amount accrued on account of such revision.

3. The brief facts of the case as disclosed in the instant writ application is that the petitioner was

appointed on the post of typist by the Governing body of S.P. College, Dumka on 01.08.1975 and after working for about 31 years he superannuated from his service on 31.12.2006. The petitioner's pay was fixed on the basis of the 4th pay revision w.e.f. 01.04.1981 and since then he was getting the same pay scale.

The Government of Jharkhand revised the pay scale of the teaching and non-teaching staffs of constituent colleges w.e.f. 01.01.1996 and also from 01.01.2006. The petitioner's pay was revised in the scale with effect from 01.01.1996 by the principal of the college and sent for approval before the Department of Higher Education, Government of Jharkhand; however, the department did not include the name of the petitioner in the approved pay fixation chart and consequently his salary and his pension was not revised.

Thereafter the petitioner knocked the door of this Court in W.P.(S) No. 1786 of 2015; whereby the Coordinate bench of this Court disposed of the writ application by directing the respondent authorities to take a decision on the representation of the petitioner. Thereafter, the respondent university after fixing the pay fixation of the petitioner has sent the same for approval before the respondent state and the State respondents passed a reasoned order dated 03.05.2019 by rejecting the claim for pay fixation of the petitioner. Hence, this application has been filed.

4. It has been submitted by learned counsel for the petitioner that the genuineness of appointment of the petitioner has been questioned by the respondent State, though the recommendation for his appointment was made by the university more than 31 years prior thereto. Since the petitioner has already superannuated in the

year 2006 itself, his appointment cannot be challenged by the respondent State.

It has been further submitted that in view of the settled principles of law and in view of Section 4(1)(14) of the Statute, it is not open for the respondent State to exercise the power under section 35 of the Statute, de hors the recommendation of the University. The petitioner was appointed on the post of typist in the year 1975, thereafter in view of the specific resolution of the university, he was adjusted as a library assistant.

Learned counsel relying upon Annexure-8, wherein it is mentioned that all appointments made prior to 1976 are on vacant and sanctioned post, submits that it can be easily inferred that the petitioner was appointed on vacant and sanctioned post and therefore the impugned order passed by the respondent state is not tenable in the eyes of law.

He lastly submits that the issue is no more *res integra*, inasmuch as, in the case of ***Ratni Oraon and Another VS State of Jharkhand and Ors. [W.P.(S) No. 7818 of 2012]*** which has been upheld up to the Hon'ble Apex Court; wherein it has been held that when during the entire service period of an employee no objection with the regard to the appointment was ever raised then it is not open for the respondent to raise the issue of appointment after his retirement/death.

5. Learned Counsel representing the respondent State has submitted that after scrutiny of the letter dated 09.04.2019 sent by the university, the Department found that the petitioner was appointed on the post of typist by the Governing Body in S.P. College, Dumka but the said post was never sanctioned by the State Government.

It has been further submitted that in order to consider the cases of absorption of Newly Constituent Colleges, the Hon'ble Supreme Court had constituted Justice (Retd.) S.C. Agrawal Commission and subsequently Justice (Retd.) S.B. Sinha Commission and Justice S.B. Sinha Commission in its order dated 11.07.2014 has dealt with the cases pertaining to Inter Department or Inter College absorption and has rejected the same and in view of the order of the Justice S.B. Sinha Commission, the pay fixation of the petitioner has been rejected and hence, the impugned order has rightly been passed.

6. The learned counsel appearing for the University has submitted that the petitioner was appointed on the post of typist in the year 1975 but since no post was mentioned in the list of sanctioned post of S.P. College Dumka, provided by the then Bhagalpur University at the time of bifurcation, hence the petitioner was adjusted against the vacant and sanctioned post of library Assistant of S.P. College, Dumka.

Learned Counsel has further submitted that since the petitioner was appointed in year 1975 and it has been held that all appointments made prior to 1976 by the Governing body of the college are on the sanctioned post and hence the pay fixation of the petitioner was rightly been fixed by the University and was sent for approval of State government.

7. Having heard learned counsel for the parties and after going through the documents available on records it appears that the case of the petitioner has been rejected on the ground that since there was no sanctioned post of typist in S.P. College Dumka thereby the adjustment of the petitioner could not have been

done on the post of Library Assistant in view of the report of Justice S.B. Sinha Commission.

As a matter of fact, the University in its pay fixation chart has already mentioned about the fact that since no post of typist was available in the said college therefore, the petitioner was adjusted on a sanctioned vacant post of Library Assistant through a resolution in the same college wherein the petitioner was working and therefore, the action of the respondent state in rejecting the claim of the petitioner is not tenable as it does not come under the ambit of the report of Justice S.B. Sinha Commission as it is not the case where an employee has been adjusted in a different college in a different subject; rather in the present case the petitioner has been adjusted in the same college and on a sanctioned vacant post.

8. Moreover during the entire service period of the petitioner, the respondent state has never raised any objection with regard to the appointment of the petitioner and it was only raised at the time of approval of pay fixation of the petitioner which is after a lapse of almost 13 years of his retirement which is not justified in the eyes of law and also the same issue has been set at rest by the Co-ordinate bench of this Court in the case of ***Ratni Oraon (supra)*** which has been upheld up to the Hon'ble Apex Court in S.L.P.(C) No. 24661 of 2016, wherein it has been held that when during the entire service period of an employee no objection with regard to the appointment was raised; then it is not open for the respondent to raise the issue of appointment after his retirement/death.

9. It is also noted that the petitioner was appointed in the year 1975 by the Governing body of the

College and in view of Annexure-8 which has been relied upon by the petitioner it was declared that all the appointment made prior to 1976 shall be deemed to be on sanctioned post and since the petitioner was admittedly appointed prior to 1976; therefore, the appointment of the petitioner should not have been questioned.

10. Accordingly, in view of the aforesaid findings the impugned order passed vide memo no. 904 dated 03.05.2019, is hereby, quashed and set aside. The respondent state is directed to approve the pay fixation of the petitioner as sent by the university within a period of six weeks from the date of receipt/production of copy of this order.

Thereafter, the University after receiving such approval shall take steps with regard to revision of pension and gratuity of the petitioner and is further directed to release all arrears with regard to petitioner pursuant to such revision of the pay. The entire exercise shall be completed by the University within a period of 12 weeks from the date of receipt the order by the State Government.

11. Accordingly, the instant writ application stands allowed in the manner stated herein above. Pending I.A.s, if any, is also closed.

(Deepak Roshan, J.)

Fahim/-